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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 120418015-2015-01]

RIN 0648-BC14

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species;  
Bigeye Tuna Catch Limit in Longline Fisheries for 2012

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule establishes a catch limit of 3,763 metric tons (mt) of bigeye tuna (Thunnus obesus) for vessels in the U.S. pelagic longline fisheries in the western and central Pacific Ocean (WCPO) for calendar year 2012. The limit does not apply to vessels in the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands (CNMI). Once the limit of 3,763 mt is reached in 2012, retaining, transshipping, or landing bigeye tuna caught in the WCPO will be prohibited for the remainder of 2012, with certain exceptions. This action is necessary for the United States to satisfy its international obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Effective on [Insert date 30 days after date of publication in the FEDERAL REGISTER]; comments must be submitted in writing by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this interim final rule, identified by NOAA-NMFS-2012-0145, and the supporting analytical documents may be sent to either of the two addresses below. The supporting documents include the 2012 supplemental environmental assessment (EA) and the regulatory impact review (RIR) prepared for this interim rule. The 2012 supplemental EA supplements a 2009 EA and a 2009 supplemental EA and includes copies of those two documents.

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking portal, at <http://www.regulations.gov>; or
- Mail: Mail written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: Comments must be submitted to one of the two addresses above to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and generally will be posted on <http://www.regulations.gov> without change. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the relevant required fields if you wish to

remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the RIR and the 2012 supplemental EA prepared under the authority of the National Environmental Policy Act (NEPA) are available at <http://www.regulations.gov> or may be obtained from Michael D. Tosatto, NMFS PIRO (see address above). The 2012 supplemental EA includes copies of the documents that it supplements – a 2009 EA and a 2009 supplemental EA.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-944-2219.

#### SUPPLEMENTARY INFORMATION:

##### Background on the Convention

Article 3 of the Convention specifies the area of application of the Convention (the Convention Area), which comprises the majority of the WCPO. A map showing the boundaries of the Convention Area can be found on the WCPFC Web site at:

<http://www.wcpfc.int/doc/convention-area-map>. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the WCPO. To accomplish this goal, the Convention establishes the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The current Members of the WCPFC are Australia, Canada, China, Chinese Taipei (Taiwan), Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Tonga, Tuvalu, United States, and Vanuatu. Certain territories also participate in the WCPFC as Participating Territories. The current Participating Territories are French Polynesia, New

Caledonia and Wallis and Futuna (affiliated with France); Tokelau (affiliated with New Zealand); and American Samoa, the CNMI and Guam (affiliated with the United States).

As a Contracting Party to the Convention and a Member of the WCPFC, the United States is obligated to implement the decisions of the WCPFC. The WCPFC Implementation Act (16 U.S.C. 6901 et seq.), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act, as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations to NMFS.

#### WCPFC Decisions Regarding Bigeye Tuna Catch Limits in Longline Fisheries

The Convention calls for the WCPFC to adopt measures designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors. With respect to bigeye tuna, the WCPFC Scientific Committee found that the stock of bigeye tuna in the WCPO is experiencing a fishing mortality rate greater than the rate associated with maximum sustainable yield. Therefore, at its Fifth Regular Session, in December 2008, the WCPFC adopted Conservation and Management Measure (CMM) 2008-01, “Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean.” The CMM and other decisions of the WCPFC

can be found at <http://www.wcpfc.int/conservation-and-management-measures>. CMM 2008-01 has the stated objective of reducing, over the period 2009-2011, the fishing mortality rate for bigeye tuna in the WCPO by at least 30 percent from a specified historical baseline. Among other provisions, the CMM establishes specific catch limits for bigeye tuna captured in the longline fisheries of the WCPFC's Members, Participating Territories, and Cooperating Non-members for the years 2009, 2010, and 2011. The limits do not apply to Participating Territories or small island developing States undertaking responsible development of their domestic fisheries.

The prescribed catch limits in CMM 2008-01 are based on specified percentages of longline catches made during specified baseline periods. For the United States, the baseline period is 2004, with a corresponding catch of 4,181 metric tons (mt). Because the baseline for the U.S. longline fishery is less than 5,000 mt per year, and because the fishery lands exclusively fresh fish, the specified annual catch limit for the U.S. longline fishery is 90 percent of the amount caught during the baseline period for each of the years 2009, 2010, and 2011, or 3,763 mt. On December 7, 2009, NMFS issued a final rule to implement the longline bigeye tuna elements of CMM 2008-01 (74 FR 63999). The rule, which became effective December 12, 2009, established the annual catch limit of 3,763 mt of bigeye tuna for U.S. longline fisheries for each of the years 2009, 2010, and 2011. On August 4, 2009, NMFS issued a separate rule to implement the purse seine-related provisions of CMM 2008-01 for 2009, 2010, and 2011 (74 FR 38544).

The WCPFC was scheduled to hold its Eighth Regular Session in early December 2011, to discuss, among other items, the provisions of CMM 2008-01, such as the bigeye tuna catch limits for longline fisheries, that were scheduled to expire at the end of calendar year 2011.

However, the Eighth Regular Session was unexpectedly postponed until March 2012. Because of that postponement, the WCPFC made an intersessional decision on December 20, 2011, to extend CMM 2008-01 until the Eighth Regular Session could be held. NMFS issued an interim rule on December 30, 2011, extending the purse seine-related provisions of CMM 2008-01 (76 FR 82180). NMFS explained in that interim rule that longline-related provisions of the WCPFC's extension of CMM 2008-01 would be addressed in a separate rulemaking.

At its Eighth Regular Session, in March 2012, the WCPFC adopted a "Conservation and Management Measure for Temporary Extension of CMM 2008-01" (CMM 2011-01). This CMM extends most provisions of CMM 2008-01, including the longline bigeye tuna catch limits applicable to the United States, until February 28, 2013.

#### The Action

The purpose of this interim final rule is to implement the longline bigeye tuna provisions of CMM 2011-01. Accordingly, this interim final rule establishes a 2012 bigeye tuna catch limit in U.S. longline fisheries in the Convention Area as follows:

#### Establishment of the Limit

Under CMM 2011-01, the 2012 bigeye tuna catch limit for U.S. longline fisheries in the Convention Area in 2012 is 3,763 mt, the same amount as for each of 2009, 2010, and 2011. This limit applies only to U.S. longline fisheries other than those of American Samoa, Guam, and the CNMI.

As in CMM 2008-01, CMM 2011-01 includes longline fishery-related provisions specifically applicable to Participating Territories in the WCPFC, which include American Samoa, Guam, and the CNMI. The longline fisheries of Participating Territories are subject to annual bigeye tuna catch limits of 2,000 mt. Under the CMM, Participating Territories

undertaking responsible development of their domestic fisheries are not subject to those annual limits. Because the limits under CMM 2011-01 for the longline fisheries of American Samoa, Guam, and CNMI far exceed the historical bigeye tuna catches in those fisheries, implementation of bigeye tuna catch limits for the U.S. Participating Territories is not included as part of this interim final rule to establish the U.S. catch limit of 3,763 mt, which needs to be established before the limit is reached.

For the purpose of this interim final rule, the longline fisheries of the three U.S. Participating Territories are distinguished from the other longline fisheries of the United States based on a combination of three factors: (1) where the bigeye tuna are landed; (2) the types of Federal longline fishing permits registered to the fishing vessel; and (3) whether the fishing vessel is included in an arrangement under Section 113(a) of the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 112-55, 125 Stat. 552 et seq., (hereafter, CFCAA) enacted November 18, 2011).

With respect to the first factor, bigeye tuna landed by U.S. vessels in any of the three U.S. Participating Territories, with certain provisos, will be attributed to the longline fishery of that Participating Territory. The provisos are that: (1) the bigeye tuna must not be captured in the portion of the U.S. exclusive economic zone (EEZ) surrounding the Hawaiian Archipelago; and (2) they must be landed by a U.S. fishing vessel operated in compliance with one of the permits required under the regulations implementing the Fishery Ecosystem Plan for the Pacific Pelagic Fisheries of the Western Pacific Region (Pelagics FEP) developed by the Western Pacific Fishery Management Council (WPFMC) or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species developed by the Pacific Fishery Management Council (i.e., a permit issued under 50 CFR 665.801 or 660.707).

With respect to the second factor, bigeye tuna that are captured by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit will, subject to the provisos mentioned above, be attributed to the longline fishery of American Samoa, regardless of where that catch is landed. This distinction is made because American Samoa Longline Limited Access Permits are issued only to people that have demonstrated participation in the American Samoa pelagic fisheries, such that the catch may properly be attributed to that territory. The regulations implementing the bigeye tuna catch limits for 2009, 2010, and 2011 included these two above factors as well as the related provisos.

The third factor, which was not included in the regulations implementing the bigeye tuna catch limits in 2009, 2010, and 2011, relates to the CFCAA. Section 113(a) of the CFCAA authorizes the U.S. Participating Territories of the WCPFC to use, assign, allocate, and manage catch limits or fishing effort limits agreed to by the WCPFC through arrangements with U.S. vessels with permits issued under the Pelagics FEP. Section 113(a) further directs the Secretary of Commerce, for the purposes of annual reporting to the WCPFC, to attribute catches made by vessels operating under Section 113(a) arrangements to the U.S. Participating Territories. Section 113(a) establishes specific eligibility criteria for such arrangements (discussed further below), and this interim final rule establishes additional requirements and conditions that must be met in order for catches to be attributed to the U.S. Participating Territories. Under this interim final rule, bigeye tuna caught in 2012 by a vessel that is included in an arrangement determined to be eligible under Section 113(a) of the CFCAA will be attributed by NMFS to the appropriate U.S. Participating Territory, according to the procedures and conditions set forth below.

The longline fisheries of the United States and its territories operating in the WCPO are managed as discrete fisheries, with separate compilations of catch and effort statistics and



separate management measures for each fishery. In order to allow for the orderly administration of these fisheries and a uniform manner of attributing catches to the fisheries of the U.S.

Participating Territories under eligible Section 113(a) of the CFCAA arrangements, NMFS will wait to attribute catches under eligible Section 113(a) arrangements until the date the catch limit will be reached can be forecasted with a reasonable degree of certainty. Thereafter, NMFS will attribute catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements seven days before the date the U.S. catch limit is forecasted to be reached. This procedure will allow NMFS to properly administer and enforce the specific management requirements for each fishery throughout the year, consistent with the approved Pelagics FEP.

As in 2009, 2010, and 2011, NMFS will prepare forecasts during 2012 of the date that the bigeye tuna catch limit is projected to be reached and will periodically make such forecasts widely available to the public, such as by posting on a Web site. All the forecasts prepared up until the time that catch attribution to the U.S. Participating Territories under Section 113(a) of the CFCAA actually begins will assume that there will be no such catch attribution to the U.S. Participating Territories. These forecasts will be subject to change as new information becomes available. Because of these potential changes, it is necessary to identify a particular forecast for the purpose of determining when catch attribution to the U.S. Participating Territories under eligible Section 113(a) arrangements will begin. For this purpose, NMFS will use the first forecast that indicates the catch limit will be reached within 28 days of the date of preparation of that forecast. The projected catch limit date in this forecast will be called, for the purpose of this interim final rule, the pre-Section 113(a) attribution forecast date. As soon as NMFS determines the pre-Section 113(a) attribution forecast date, NMFS will evaluate all Section 113(a) arrangements that it has received to date, based on the eligibility criteria specified below, and

recalculate the forecast date for the catch limit, this time not counting as part of the tally of U.S. catches the catches to be attributed to the U.S. Participating Territories under eligible Section 113(a) arrangements. In order to allow NMFS a reasonable amount of time to complete this process, NMFS will begin attributing catches to the U.S. Participating Territories under eligible Section 113(a) arrangements seven days before the pre-Section 113(a) attribution forecast date. At that time, NMFS will also make publicly available a new forecast date on a Web site – the post-Section 113(a) attribution forecast date – and will update that forecast date as appropriate throughout 2012.

There will be no official due date for the receipt by NMFS of potentially eligible CFCAA Section 113(a) arrangements. However, NMFS will need 14 days to process arrangements that it receives, so for an arrangement received after the date that NMFS determines the pre-Section 113(a) attribution forecast date, attribution to the appropriate U.S. Participating Territory will start 14 days after NMFS has received the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever date is later.

NMFS considered starting catch attribution to the U.S. Participating Territories under eligible CFCAA Section 113(a) arrangements only after the 3,763 mt catch limit is reached, in order to be consistent with past administration of the longline fisheries in the WCPO. However, given the time needed to process Section 113(a) arrangements and the time needed to put into effect the prohibitions once the 3,763 mt catch limit is reached, waiting until the catch limit is reached to begin attribution under arrangements with the U.S. Participating Territories could potentially cause public confusion and result in unnecessary costs in the fishery. For example, should attribution begin only after the catch limit is reached and the prohibitions go into effect, a vessel owner providing NMFS with an eligible arrangement a few days before the catch limit is

reached would be subject to the prohibitions for a number of days while the arrangement is processed, even though the prohibitions would be later found not to apply to the vessel.

Beginning attribution to the U.S. Participating Territories a short period before the pre-Section 113(a) attribution forecast date would help avoid the confusion and costs associated with such a situation. It could also have the advantage of avoiding, in certain circumstances, the administrative and other costs associated with putting the prohibitions into effect.

In order for NMFS to attribute to the longline fishery of a U.S. Participating Territory bigeye tuna caught by a particular vessel included in an arrangement under Section 113(a) of the CFCAA, certain requirements under this rule must be met. First, with the exception of existing arrangements received by NMFS prior to the effective date of this interim final rule, NMFS must have received from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the date the bigeye tuna was caught. In addition, the arrangement must satisfy specific criteria, discussed in detail in the section below, to ensure that it meets the requirements of an eligible arrangement under Section 113(a).

Section 113(a) of the CFCAA remains in effect until the earlier of December 31, 2012, or such time as the WPFMC recommends, and the Secretary approves, an amendment to the Pelagics FEP that would authorize U.S. Participating Territories to use, assign, allocate, and manage catch limits of highly migratory fish stocks, or fishing effort limits, established by the WCPFC, and the amendment is implemented via regulations. NMFS will take the status of that amendment into consideration in the development of the final rule for this action.

Any bigeye tuna attributed to the longline fisheries of American Samoa, Guam, or the CNMI as provided under this rule will not be counted against the U.S. limit. All other bigeye

tuna captured by longline gear in the Convention Area by U.S. longline vessels and retained will be counted against the U.S. limit.

#### Eligible Arrangements

Under this interim final rule, an arrangement shall not be eligible for the attribution of bigeye tuna to the U.S. Participating Territories under the terms of Section 113(a) unless each of the following five criteria is met: (1) the arrangement must include vessels registered for use with valid permits issued under the Pelagics FEP; (2) the arrangement must impose no requirements regarding where the vessels fish or land their catch; (3) the arrangement must be signed by all the owners of the vessels included in the arrangement, or by their designated representative(s); (4) the arrangement must be signed by an authorized official of the U.S. Participating Territory(ies) or his or her designated representative(s); and (5) the arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in a territory's Marine Conservation Plan adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act. If NMFS determines that an arrangement does not meet the criteria for eligibility, NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement.

NMFS is currently aware of one existing arrangement, between the Government of American Samoa and the Hawaii Longline Association (HLA), that is subject to Section 113(a) of the CFCAA. This arrangement is set to expire at the end of 2012. This interim final rule is not expected to materially affect implementation of this arrangement under Section 113.

The procedures and criteria for the attribution of bigeye tuna catch to the U.S. Participating Territories established in this interim final rule are applicable only for 2012. If the

WCPFC adopts catch limits for bigeye tuna that are applicable in 2013 or beyond, NMFS will review and revise the requirements of this interim final rule when implementing those catch limits, as appropriate, to ensure consistency with WCPFC decisions and all applicable law.

#### Announcement of the Limit Being Reached

If NMFS determines that the limit is expected to be reached before the end of 2012, NMFS will publish a notice in the Federal Register to announce specific fishing restrictions that will be effective from the date the limit is expected to be reached until the end of the 2012 calendar year. NMFS will publish the notice of the restrictions at least seven calendar days before the effective date to provide fishermen with advance notice. As stated above, periodic forecasts of the date the limit is expected to be reached will be made widely available to the public, such as by posting on a Web Site, to help fishermen plan for the possibility of the limit being reached.

#### Prohibited Activities After the Limit is Reached

(1) Retain on board, transship, or land bigeye tuna: Starting on the effective date of the restrictions and extending through December 31, 2012, it will be prohibited to use a U.S. fishing vessel to retain on board, transship, or land bigeye tuna captured in the Convention Area by longline gear, except as follows:

First, any bigeye tuna already on board a fishing vessel upon the effective date of the restrictions may be retained on board, transshipped, and/or landed, provided that they are landed within 14 days after the restrictions become effective. A vessel that has declared to NMFS pursuant to 50 CFR 665.803(a) that the current trip type is shallow-setting is not subject to this 14-day landing restriction.

Second, bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are captured by a fishing vessel registered for use under a valid American Samoa Longline Limited Access Permit or if they are landed in American Samoa, Guam, or the CNMI, with the following provisos: The bigeye tuna must not have been caught in the portion of the U.S. EEZ surrounding the Hawaiian Archipelago and must be landed by a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

Third, bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in an eligible arrangement under Section 113(a) of the CFCAA, as specified above, and the bigeye tuna are subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI in accordance with the terms of the arrangement, and to the extent consistent with the requirements and procedures established in this interim final rule, with the following proviso: NMFS must have received from the vessel owner or designated representative a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing). The advance notification provision will not apply to existing arrangements received by NMFS prior to the effective date of this interim final rule.

(2) Transshipment of bigeye tuna to certain vessels: Starting on the effective date and extending through December 31, 2012, it will be prohibited to transship bigeye tuna caught in the Convention Area by longline gear to any vessel other than a U.S. fishing vessel operated in compliance with a valid permit issued under 50 CFR 660.707 or 665.801.

(3) Fishing inside and outside the Convention Area: To help ensure compliance with the restrictions related to bigeye tuna caught by longline gear in the Convention Area, this interim rule establishes two additional, related prohibitions that will be in effect starting on the effective

date and extending through December 31, 2012. First, it will be prohibited to fish with longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip that is in progress at the time the announced restrictions go into effect. In that exceptional case, the vessel will still be required to land any bigeye tuna taken in the Convention Area within 14 days of the effective date of the restrictions, as described above. Second, if a vessel is used to fish using longline gear outside the Convention Area and enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing while the vessel is in the Convention Area. These two prohibitions do not apply to the following vessels: (1) vessels on declared shallow-setting trips pursuant to 50 CFR 665.803(a); and (2) vessels operating for the purposes of this rule as part of the longline fisheries of American Samoa, Guam, or the CNMI (including vessels registered for use under valid American Samoa Longline Limited Access Permits; vessels landing their bigeye tuna catch in one of the three U.S. Participating Territories, so long as these vessels conduct fishing activities in accordance with the provisos described above; and vessels included in an eligible arrangement under Section 113(a) of the CFCAA, as specified above, provided that their catches of bigeye tuna are subject to attribution to the longline fishery of American Samoa, Guam, or the CNMI at the time of the activity).

#### Classification

The NMFS Assistant Administrator has determined that this interim rule is consistent with the WCPFC Implementation Act and other applicable laws.

#### Administrative Procedure Act

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and prior opportunity for public comment on this action, because those requirements are contrary to the public interest

and impracticable. Because of the unexpected postponement of the Eighth Regular Session of the WCPFC due to a power outage in the host country, CMM 2011-01 was not agreed upon by the WCPFC as the replacement measure for CMM 2008-01 until March 30, 2012. Pursuant to CMM 2011-01, this rule establishes requirements applicable to U.S. fishing vessels that catch, retain, transship or land bigeye tuna in the Convention Area in 2012. Further delaying implementation of a WCPFC conservation and management measure intended to establish annual limits for a bigeye tuna stock that is subject to overfishing would be contrary to the public's interest because without implementation, there are no limits on U.S. longline bigeye tuna catches in the WCPO. Such a result would also violate NMFS' obligations under the Magnuson-Stevens Fishery Conservation and Management Act for the proper management of fishery resources and be inconsistent with the United States' international legal obligations.

Moreover, the requirements in this rule are substantially similar to the regulations established in 2009 that were applicable during the years 2009-2011 (to implement WCPFC CMM 2008-01). With the exception of the catch attribution provisions related to implementation of Section 113(a) of the CFCAA, all the requirements in this rule were subject to prior notice and opportunity for public comment in 2009 (proposed rule published July 8, 2009, 74 FR 32521; final rule published December 7, 2009, 74 FR 63999).

With respect to the catch attribution provisions related to implementation of Section 113(a) of the CFCAA, this interim final rule establishes a process allowing for the orderly administration of these fisheries and a uniform manner of attributing catches to the fisheries of the U.S. Participating Territories under eligible Section 113(a) arrangements. Without waiving prior notice and prior opportunity for public comment on this interim final rule, it is unlikely that NMFS would be able to implement the requirements of Section 113(a) of the CFCAA prior to



the annual limit established here being reached in 2012. As stated above, NMFS will determine the pre-Section 113(a) attribution forecast date for the catch limit as soon as the catch forecast indicates that the limit will be reached within 28 days. At that time, NMFS will begin the process to attribute bigeye tuna catch to the appropriate U.S. Participating Territories. A new forecast date – the post-Section 113(a) attribution forecast date – will be made publicly available on a Web site seven days before the pre-Section 113(a) attribution forecast date. If NMFS were to provide the public prior notice and an opportunity to comment on this rule before making effective this interim final rule, it is unlikely that NMFS would be able to establish the catch limit before the pre-Section 113(a) attribution forecast date is reached. Given the time generally needed to consider public comments and to prepare and to make effective a final rule incorporating those comments, NMFS would not be able to establish the process for attributing catch to the U.S. Participating Territories under eligible Section 113(a) arrangements before the pre-Section 113(a) attribution forecast date is determined in 2012. Additionally, the process for attribution under Section 113(a) arrangements could affect the behavior of the fishery prior to closure, and in this interim final rule NOAA provides guidance as early as possible so as to allow fishers to plan for the fishing season.

Finally, NMFS must implement the 2012 longline bigeye tuna catch limit in CMM 2011-01 before the limit is reached in order to satisfy international legal obligations and to ensure there is no gap in the implementation of important conservation measures for bigeye tuna in the Pacific Ocean, which is subject to overfishing.

Accordingly, we find that it would be contrary to the public interest and impracticable to the United States' ability to meet its international obligations to delay implementation of the

catch limit provisions in order to hold a prior comment period on the CFCAA Section 113(a)-related provisions.

Therefore, NMFS finds it is impracticable and contrary to the public interest to provide prior notice and prior opportunity for public comment on this interim final rule. A comment period is provided by this interim final rule, and comments on the interim final rule will be considered prior to publication of the final rule.

#### Coastal Zone Management Act (CZMA)

NMFS has determined that this rule will be implemented in a manner consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal zone management programs of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the State of Hawaii. This determination has been submitted for review by the responsible territorial and state agencies under section 307 of the CZMA.

#### Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866.

#### National Environmental Policy Act

NMFS prepared an EA and Supplemental EA in 2009 to evaluate the environmental effects of the implementation of the bigeye tuna catch limits for U.S. longline fisheries for 2009, 2010, and 2011. NMFS has prepared a Supplemental EA that builds upon the analyses in the 2009 EA and Supplemental EA, and evaluates the effects of this interim final rule on the human environment. NMFS has determined that there will be no significant impact on the human environment as a result of this interim final rule and an Environmental Impact Statement need not be prepared.

### Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

### List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: August 21, 2012

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Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 et seq.

2. In § 300.222, paragraphs (bb) through (dd) are revised to read as follows:

#### § 300.222 Prohibitions.

\* \* \* \* \*

(bb) Use a fishing vessel to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area or to fish in contravention of § 300.224(f)(1) or (f)(2).

(cc) Use a fishing vessel to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area on the same fishing trip in contravention of § 300.224(f)(3).

(dd) Fail to stow longline gear as required in § 300.224(f)(4).

3. Section 300.224 is revised to read as follows:

#### § 300.224 Longline fishing restrictions.

(a) Establishment of bigeye tuna catch limit. There is a limit of 3,763 metric tons of bigeye tuna that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States during the 2012 calendar year.

(b) Exception for bigeye tuna landed in territories. Bigeye tuna landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands will be attributed to the longline fishery of the territory in which it is landed and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(c) Exception for bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits. Bigeye tuna caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title will be attributed to the longline fishery of American Samoa and will not be counted against the limit established under paragraph (a) of this section, provided that:

(1) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago; and

(2) The bigeye tuna were landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(d) Exception for bigeye tuna caught by vessels included in Section 113(a) arrangements. Bigeye tuna caught in 2012 by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012, will be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, according to the terms of the arrangement to the extent they are consistent with this section and applicable law, and will not be counted against the limit, provided that:

(1) NMFS has received a copy of the arrangement from the vessel owner or a designated representative at least 14 days prior to the date the bigeye tuna was caught, except that this requirement shall not apply to any arrangement provided to NMFS prior to the effective date of this paragraph;

(2) The bigeye tuna was caught on or after the “start date” specified in paragraph (g)(2) of this section; and

(3) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012, in accordance with the criteria specified in paragraph (g)(3) of this section.

(e) Announcement of catch limit being reached and fishing prohibitions. NMFS will monitor retained catches of bigeye tuna with respect to the limit established under paragraph (a) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit is expected to be reached by a specific future date, and at least seven calendar days in advance of that specific future date, NMFS will publish a notice in the Federal Register announcing that specific prohibitions will be in effect starting on that specific future date and ending December 31, 2012.

(f) Prohibitions after catch limit is reached. Once an announcement is made pursuant to paragraph (e) of this section, the following restrictions will apply during the period specified in the announcement:

(1) A fishing vessel of the United States may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(i) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective. The 14-day landing requirement does not apply to a vessel that

has declared to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting.

(ii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are landed in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iii) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they are caught by a vessel registered for use under a valid American Samoa Longline Limited Access Permit issued under § 665.801(c) of this title, provided that:

(A) The bigeye tuna were not caught in the portion of the EEZ surrounding the Hawaiian Archipelago;

(B) Such retention, transshipment, and/or landing is in compliance with applicable laws and regulations; and

(C) The bigeye tuna are landed by a fishing vessel operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(iv) Bigeye tuna captured by longline gear may be retained on board, transshipped, and/or landed if they were caught by a vessel that is included in an arrangement under the authorization of Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further

Continuing Appropriations Act, 2012, if the arrangement provides for the bigeye tuna when caught to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, provided that:

(A) NMFS has received a copy of the arrangement at least 14 days prior to the activity (i.e., the retention on board, transshipment, or landing), unless NMFS has received a copy of the arrangement prior to the effective date of this section;

(B) The “start date” specified in paragraph (g)(2) of this section has occurred or passed; and

(C) NMFS has determined that the arrangement satisfies the requirements of Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012, in accordance with the criteria specified in paragraph (g)(3) of this section.

(2) Bigeye tuna caught by longline gear in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.801 of this title.

(3) A fishing vessel of the United States, other than a vessel that catches bigeye tuna catch that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands in accordance with paragraphs (b), (c), or (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (e) of this section, in which case the bigeye tuna on board the



vessel may be retained on board, transshipped, and/or landed, to the extent authorized by applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(4) If a fishing vessel of the United States, other than a vessel that catches bigeye tuna catch that is to be attributed to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands, in accordance with paragraphs (b), (c), and (d) of this section, or a vessel for which a declaration has been made to NMFS, pursuant to § 665.803(a) of this title, that the current trip type is shallow-setting, is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must, while in the Convention Area, be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

(g) Procedures and conditions for Section 113(a) arrangements. This paragraph establishes procedures to be followed and conditions that must be met with respect to arrangements authorized under Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012. These procedures and conditions apply to paragraphs (d), (f)(1)(iv), (f)(3), and (f)(4) of this section.

(1) For the purpose of this section, the “pre-Section 113(a) attribution forecast date” is the date the catch limit established under paragraph (a) of this section is forecast by NMFS to be reached, assuming that no catches would be attributed to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands under arrangements

authorized under Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012. Since forecasts are subject to change as new information becomes available, NMFS will use for this purpose the first forecast it prepares that indicates that the date of the limit being reached is less than 28 days after the date the forecast is prepared.

(2) For the purpose of this section, the “start date” for attribution of catches to the longline fisheries of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands for a particular arrangement is:

(i) For arrangements copies of which are received by NMFS no later than the date NMFS determines the pre-Section 113(a) attribution forecast date, seven days before the pre-Section 113(a) attribution forecast date; and

(ii) For arrangements copies of which are received by NMFS after the date NMFS determines the pre-Section 113(a) attribution forecast date, 14 days after the date that NMFS receives a copy of the arrangement or seven days before the pre-Section 113(a) attribution forecast date, whichever is later.

(3) NMFS will determine whether an arrangement satisfies the requirements of Section 113(a) of Public Law 112-55, 125 Stat. 552 et seq., the Consolidated and Further Continuing Appropriations Act, 2012, for the attribution of bigeye tuna to the longline fishery of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands according to the following criteria:

(i) Vessels included under the arrangement must be registered for use with valid permits issued under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region;

(ii) The arrangement must not impose any requirements regarding where the vessels included in the arrangement fish or land their catch;

(iii) The arrangement must be signed by the owners of all the vessels included in the arrangement or their designated representative(s);

(iv) The arrangement must be signed by an authorized official of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands or his or her designated representative(s); and

(v) The arrangement must be funded by deposits to the Western Pacific Sustainable Fisheries Fund in support of fisheries development projects identified in the Marine Conservation Plan of American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands adopted pursuant to section 204 of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) NMFS will notify the parties to the arrangement or their designated representative(s) within 14 days of receiving a copy of the arrangement, if the arrangement does not meet the criteria specified in paragraph (g)(3) of this section.